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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,

Plaintiff,

v.

DILLARD'S INC.; DILLARD STORE  
SERVICES, INC.; and DOES 1-11,  
INCLUSIVE,

Defendants.

) Case No. CV 3:08-CV-1780 CAB PCL

) **[PROPOSED] CONSENT DECREE AND  
ORDER**

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Plaintiff U.S. Equal Employment Opportunity Commission (the "EEOC") and Defendants Dillard's, Inc. and Dillard Store Services, Inc. ("Defendants") hereby stipulate and agree to entry of this Consent Decree ("Decree") to resolve the following as to all employees who have claims within the scope of the following Complaint and Charges:

A. The EEOC's Complaint against Defendants in U.S. Equal Employment Opportunity Commission v. Dillard's Inc.; Dillard Store Services, Inc.; and Does 1-11, Inclusive, Civil No. 08-CV-1780 IEG JMA, filed on September 29, 2008, in the United States District Court for the Southern District of California (the "Lawsuit"). The EEOC filed the Lawsuit under the American's with Disabilities Act, as amended, 42 U.S.C. § 12112, *et seq.* (the "ADA"), alleging that Defendants discriminated against Charging Party Scott and a class of similarly situated employees by requiring the disclosure of confidential medical information and interfering with their rights under the ADA, and that Defendants subjected Charging Party Scott to retaliatory discharge. The Lawsuit concerns Defendants' Imperial Valley Mall Dillard's employees subjected to these alleged discriminatory practices from August 16, 2005, though the present. EEOC is the sole plaintiff in the Lawsuit.

B. The EEOC Charge of Discrimination No. 487-2009-00291 (Mitchell v. Dillards Dept. Store 942) filed on January 22, 2009 (the "Mitchell Charge"), alleging unlawful medical inquiries and claims associated with Defendants' leave of absence policy providing for employment termination after

1 a fixed time period of leave from work ("Fixed Leave Policy"), both of which EEOC claims are in  
2 violation of the Americans with Disabilities Act of 1990, as amended.

3 C. The EEOC Commissioner's Charge of Discrimination No. 480-2012-00207  
4 (Commissioner Ishimaru v. Dillard's Inc.) filed on October 21, 2011 (the "Commissioner's Charge"),  
5 alleging violations of the ADA throughout all Dillard's stores nationwide regarding the required  
6 disclosure of confidential medical information in order for an absence to be excused.

7 D. Defendants deny all allegations set forth in and/or within the reasonable scope of the  
8 Lawsuit, the Mitchell Charge and the Commissioner's Charge and expressly deny that they violated the  
9 ADA or any provision thereof in any manner as to any Dillard's employee, at any Dillard's store,  
10 nationwide from March 2005 to the present. Defendants further expressly deny that they retaliated  
11 against Corina Scott in violation of the ADA. Nothing in this Decree shall be construed as an admission  
12 by Defendants of any violation of any applicable law.

13 **I.**

14 **PURPOSES AND SCOPE OF THE DECREE**

15 A. The Parties to this Decree are the EEOC and Defendants. This Decree shall be binding  
16 on and enforceable against Defendants and their respective officers, directors, agents, successors and  
17 assigns.

18 B. The parties have entered into this Decree for the following purposes:  
19 1. To provide appropriate monetary and injunctive relief;  
20 2. To ensure employment practices in compliance with federal law;  
21 3. To ensure a workplace free from retaliation;  
22 4. To modify policies, procedures, and practices regarding employment  
23 discrimination on the basis of disability, including policies, procedures, and practices regarding  
24 employer requests for confidential medical information and maximum leaves of absence;  
25 5. To ensure training of personnel regarding the ADA/ADAAA; and  
26 6. To ensure effective record-keeping procedures.

27 C. The scope of this Decree is to apply to Defendants' facilities nationwide unless otherwise  
28 indicated in this Decree.

1 II.

2 **RELEASE OF CLAIMS**

3 A. This Decree fully and completely resolves all issues, claims, and allegations against  
4 Defendants that are set forth in and/or are within the reasonable scope of the Lawsuit, the Mitchell  
5 Charge, and the Commissioner's Charge. As of the Effective Date of this Decree, no individual, class of  
6 individuals, or government entity (including the EEOC) can file or maintain an administrative charge or  
7 suit against Defendants based on the issues, claims, and/or allegations released by this Decree.

8 B. Nothing in this Decree shall be construed to preclude any party from bringing suit to  
9 enforce this Decree in the event that any party hereto fails to perform the promises and representations  
10 contained herein.

11 C. Nothing in this Decree shall be construed to limit or reduce Defendants' obligation to  
12 comply fully with the ADA/ADAAA or any other federal employment statute.

13 D. This Decree in no way affects the EEOC's right to bring, process, investigate, or litigate  
14 other charges outside the scope of this Decree that may be in existence or may later arise against  
15 Defendants in accordance with standard EEOC procedures.

16 III.

17 **JURISDICTION**

18 A. The Court has jurisdiction over the parties and the subject matter of the Lawsuit, Mitchell  
19 Charge, and Commissioner's Charge. The Lawsuit, Mitchell Charge, and Commissioner's Charge assert  
20 claims that, if proven, would authorize the Court to grant the equitable relief set forth in this Decree.

21 B. The terms and provisions of this Decree are fair, reasonable, and just.

22 C. This Decree conforms with the Federal Rules of Civil Procedure and the ADA/ADAAA  
23 and is not in derogation of the rights or privileges of any person.

24 D. The Court shall retain jurisdiction of the Action during the duration of the Decree for the  
25 purposes of entering any order, judgment, or decree that may be necessary to implement the relief  
26 provided herein.

1 IV.

2 **EFFECTIVE DATE AND DURATION OF DECREE**

3 A. The provisions and agreements contained herein are effective immediately upon the date  
4 which this Decree is entered by the Court (“the Effective Date”).

5 B. Except as otherwise provided herein, this Decree shall remain in effect for three (3) years  
6 after the Effective Date.

7 V.

8 **MODIFICATION AND SEVERABILITY**

9 A. This Decree constitutes the complete understanding of the Parties with respect to the  
10 matters contained herein.

11 B. By mutual agreement of the Parties, this Decree may be amended or modified in the  
12 interests of justice and fairness in order to effectuate the provisions of the Decree. No waiver,  
13 modification, or amendment of any provision of this Decree will be effective unless made in writing and  
14 signed by an authorized representative of each of the Parties.

15 C. If one or more of the provisions of the Decree are rendered unlawful or unenforceable,  
16 the Parties shall make good faith efforts to agree upon appropriate amendments to this Decree in order to  
17 effectuate the purposes of the Decree. In any event, the remaining provisions will remain in full force  
18 and effect unless the purposes of the Decree cannot, despite the Parties’ best efforts, be achieved.

19 VI.

20 **COMPLIANCE AND RESOLUTION**

21 A. The Parties expressly agree that if the EEOC has reason to believe that Defendants have  
22 failed to comply with any provision of this Decree, the EEOC may bring an action before this Court to  
23 enforce the Decree. Prior to initiating such action, the EEOC will notify Defendants and their legal  
24 counsel of record, in writing, of the nature of the dispute. This notice shall specify the particular  
25 provision(s) that the EEOC believes Defendants have breached. Defendants shall have fifteen (15) days  
26 to attempt to resolve or cure the breach, however, the Parties can agree to extend this period upon  
27 mutual consent.

1 B. The Parties agree to cooperate with each other and use their best efforts to resolve any  
2 dispute referenced in the EEOC notice.

3 C. After fifteen (15) days have passed with no resolution or agreement to extend the time  
4 further, the EEOC may petition this Court for resolution of the dispute, seeking all available relief,  
5 including an extension of the term of the Decree for such period of time as Defendants or their  
6 successors are shown to be in breach of the Decree.

7 **VII.**

8 **MONETARY RELIEF**

9 A. Total Monetary Relief

10 In settlement of the Scott Lawsuit, the Mitchell Charge and the Commissioner's Charge,  
11 Defendants shall pay the gross sum of two million dollars (\$2,000,000.00). The gross sum is inclusive  
12 of all individual monetary relief and "Class Fund" monetary relief, as defined and specified below. The  
13 EEOC has full and complete discretion under the terms of this Decree to determine the amounts of any  
14 payments to be distributed and the characterization of such payments as income, wages or otherwise, as  
15 hereinafter described in this Decree. The EEOC's full and complete discretion is a material term of this  
16 Decree.

17 B. Monetary Relief – Charging Party Scott and Charging Party Mitchell

18 1. In settlement of Charging Party Corina Scott's claims in the Scott Lawsuit,  
19 Defendants shall pay to her such portion of the Total Monetary Relief as designated by the EEOC.

20 2. In settlement of Charging Party Christopher Mitchell's claims in the Mitchell  
21 Charge, Defendants shall pay to him such portion of the Total Monetary Relief as designated by the  
22 EEOC.

23 3. Payments to Scott and Mitchell will be made for the full amounts designated by  
24 EEOC, which amounts will be paid to each in two checks: (a) a non-wage compensation check will be  
25 issued for damages in the form of emotional pain and suffering, which will be ninety percent (90%) of  
26 the distribution amount, and for this payment Defendants, in the ordinary course, shall prepare and  
27 distribute 1099 tax reporting forms to Scott and Mitchell, if required by law, and shall make any  
28 appropriate reports to the Internal Revenue Service and other tax authorities; and (b) a wage payment

1 will be made for the remaining ten percent (10%) of the distribution amount, which payment will be  
2 treated as wages, subject to deductions for federal and state withholding taxes and other deductions  
3 Defendants are required by law to make. Defendants shall pay the employer's portion of all deductions  
4 required by law, including but not limited to FICA and FUTA taxes, and such amounts shall not be  
5 deducted from payment of the monetary settlement amounts of Scott or Mitchell. Defendants, in the  
6 ordinary course, shall prepare and distribute W-2 forms to Scott and Mitchell.

7 C. Monetary Relief – Class Fund

8 In settlement of the class-based claims in (1) the Lawsuit and (2) the Mitchell Charge and  
9 Commissioner's Charge collectively, Defendants shall establish a class fund (the "Class Fund"), in the  
10 amount of two million dollars (\$2,000,000) less the amounts paid to Charging Parties Scott and  
11 Mitchell. Within fifteen (15) days of the Effective Date, Defendants shall deposit the Class Fund  
12 amount in a segregated interest bearing account from which all payments for class-based claims will be  
13 made. Any interest earned at the rate available to Defendants when the account is established will be  
14 maintained in the account and disbursed to the class as designated by EEOC or the agreed-upon charity  
15 as detailed below.

16 1. Lawsuit Claimants

17 a. A "Lawsuit Claimant" is any person who at any time was employed by  
18 Defendants at the Imperial Valley Mall Dillard's store and whom the EEOC has identified as an  
19 individual impacted by the policy requiring disclosure of medical information to excuse an absence.  
20 The EEOC shall have the sole discretion to determine each Lawsuit Claimant. The EEOC shall have  
21 sole discretion to designate the amount of the Class Fund to be distributed to each Lawsuit Claimant and  
22 to characterize such payment as income, wages or otherwise, as hereinafter described in this Decree.

23 b. The EEOC shall notify Defendants of the identity of each Lawsuit  
24 Claimant, the individualized distribution of the Class Fund, and the proper address to which each  
25 Lawsuit Claimant payment shall be mailed.

26 c. Within fifteen (15) days of the EEOC providing notice of distribution  
27 amounts, Defendants shall forward via first class mail to each Lawsuit Claimant who is a current  
28 employee at the time of distribution, a single check for the gross amount designated by EEOC which

1 payment will be treated as wages, subject to deductions for federal and state withholding taxes and other  
2 deductions Defendants are required by law to make. Defendants shall pay the employer's portion of all  
3 deductions required by law, including but not limited to FICA and FUTA taxes, and such amounts shall  
4 not be deducted from wage payments to the claimants. Defendants, in the ordinary course, shall prepare  
5 and distribute W-2 forms to these claimants. Within three (3) business days of mailing the  
6 aforementioned payments, Defendants shall submit a copy of the checks and any related correspondence  
7 to Anna Y. Park, Regional Attorney, U.S. Equal Employment Opportunity Commission, 255 East  
8 Temple Street, 4th Floor, Los Angeles, California 90012.

9 d. Within fifteen (15) days of the EEOC providing notice of distribution  
10 amounts, Defendants shall forward via first class mail to each Lawsuit Claimant who is a former  
11 employee at the time of distribution, payment for a gross amount equal to the full amount set forth in the  
12 notice of distribution amounts as described below:

13 i. For any Lawsuit Claimant EEOC designates as receiving an  
14 amount for damages only in the form of emotional pain and suffering, as opposed to damages for  
15 emotional pain and suffering in addition to damages for lost wages, Defendants shall mail a non-wage  
16 compensation check which will be one-hundred percent (100%) of the distribution amount. Defendants,  
17 in the ordinary course, shall prepare and distribute a 1099 tax reporting form to each such Lawsuit  
18 Claimant, if required by law, and shall make any appropriate reports to the Internal Revenue Service and  
19 other tax authorities. Within three (3) business days of mailing the aforementioned payments,  
20 Defendants shall submit a copy of the checks and any related correspondence to Anna Y. Park, Regional  
21 Attorney, U.S. Equal Employment Opportunity Commission, 255 East Temple Street, 4th Floor, Los  
22 Angeles, California 90012.

23 ii. For any Lawsuit Claimant EEOC designates as receiving an  
24 amount for damages both in the form of emotional pain and suffering and in the form of lost wages,  
25 Defendants shall mail two checks for a gross amount equal to the full amount set forth in the notice of  
26 distribution amounts. The two checks will include one check for non-wage compensation for damages  
27 in the form of emotional pain and suffering, and one check for wage compensation for damages in the  
28 form of lost wages. The non-wage check will be ninety percent (90%) of the distribution amount, and



1 for this payment Defendants, in the ordinary course, shall prepare and distribute a 1099 tax reporting  
2 form to each claimant, if required by law, and shall make any appropriate reports to the Internal  
3 Revenue Service and other tax authorities. The wage check will be ten percent (10%) of the distribution  
4 amount, which payment will be treated as wages, subject to deductions for federal and state withholding  
5 taxes and other deductions Defendants are required by law to make. For each wage check, Defendants  
6 shall (a) pay the employer's portion of all deductions required by law, including but not limited to FICA  
7 and FUTA taxes, and such amounts shall not be deducted from wage payments to the claimants and (b)  
8 prepare and distribute a W-2 form to each claimant in the ordinary course.

9 2. Mitchell and Commissioner's Charge Claimants

10 a. A "Mitchell/Commissioner's Charge Claimant" ("CC Claimant") is any person  
11 employed by Defendants at any Dillard's store, (1) at any time between August 16, 2005, and August  
12 15, 2009, whom the EEOC has identified as an individual impacted by the policy of requiring disclosure  
13 of medical information, or (2) whom EEOC has identified as disabled within the meaning of the ADA or  
14 ADAAA and was terminated after May 28, 2008, up to the Effective Date, following the expiration of  
15 the employee's leave under Dillard's fixed leave period and whom the EEOC has identified as an  
16 individual whom Dillard's failed to accommodate consistent with the requirements of the ADA and/or  
17 ADAAA. The EEOC shall have sole discretion to identify CC Claimants and for good cause may grant  
18 an exemption of any above-cited limitation on the date of harm.

19 b. A "Potential CC Claimant" is any person employed by Defendants at any  
20 Dillard's store, (1) at any time between August 16, 2005, and August 15, 2009, and/or (2) who was  
21 terminated at any time between May 28, 2008, and the Effective Date, after having taken the maximum  
22 amount of leave available under Defendant's leave of absence policy for the employee's own physical or  
23 mental health condition. A Potential CC Claimant shall exclude seasonal employees who are defined as  
24 employees who worked at Dillard's for a period less than 90 days.

25 D. Claims Notice Process

26 1. Defendants shall, for any Potential CC Claimant (1) who was employed at any  
27 time between August 16, 2005, and July 7, 2007, and/or (2) who was terminated at any time between  
28 May 28, 2008, and the Effective Date, after having taken the maximum amount of leave available under

1 Defendant's leave of absence policy for the employee's own physical or mental condition, provide  
2 notice as follows.

- 3           a.       Within sixty (60) days of the Effective Date the Defendants shall
- 4                   (i)     determine the validity of each such Potential CC Claimant's most-
- 5 recent address utilizing the National Change of Address Database or the most-recent email address from
- 6 Defendants' own records,
- 7                   (ii)    send to each such Potential CC Claimant, via first class mail, a
- 8 Notice and Claim Form and a Business Reply Envelope (BRE) addressed to the Defendants,
- 9                   (iii)   provide to the EEOC certification that the Defendants mailed a
- 10 Notice and Claim Form and BRE or emailed a Notice and Claim Form to each such Potential CC
- 11 Claimant, and
- 12                   (iv)   instruct the USPS to notify Defendants of any returned mailed
- 13 Notice and Claim Form.

14       Any such Potential CC Claimant whose original Notice and Claim Form is not returned

15 undeliverable shall have sixty (60) days from the date the Defendants mailed an unreturned Notice and

16 Claim Form either to return a completed Claim Form or complete and submit an on-line Claim Form if

17 an on-line Claim Form is available at that time.

- 18       b.       Within thirty (30) days of any Notice and Claim Form being returned to
- 19 sender as undeliverable, Defendants shall

20                   (i)     research such Potential CC Claimant's most-recent address and

21 further use its best efforts, including a search of a database such as Accurint, to locate such Potential

22 CC Claimant,

23                   (ii)    if Defendants find a more-recent address for such Potential CC

24 Claimant, mail the Notice and Claim Form to such Potential CC Claimant at the more-recent address,

25 and

26                   (iii)   if Defendants fail to find a more-recent address for any such

27 Potential CC Claimant(s), Defendants shall in thirty (30) day intervals following the mailing of the first

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1 group of Notice and Claim Forms, provide to the EEOC certification outlining their efforts to locate such  
2 Potential CC Claimant(s).

3 Any such Potential CC Claimant whose original Notice and Claim Form was returned  
4 undeliverable shall have sixty (60) days from the date of the re-mailing either to return a completed  
5 Claim Form or to complete and submit an on-line Claim Form if an on-line Claim Form is available at  
6 that time. Any such Potential CC Claimant whose original Notice and Claim Form is returned  
7 undeliverable and for whom Defendants cannot find a more-recent address within thirty (30) days of the  
8 Notice and Claim Form being returned to sender as undeliverable shall not be entitled to collect from the  
9 Fund. Any such Potential CC Claimant whose second, re-mailed Notice and Claim Form is returned  
10 undeliverable shall not be entitled to collect from the Fund. At thirty day intervals after mailing of the  
11 first group of second, re-mailed Notice and Claim Forms, Defendants shall forward to EEOC any  
12 submitted or entered Claim Form received from any Potential CC Claimant and shall forward to EEOC  
13 either any second, re-mailed Notice and Claim Form that has been returned undeliverable or a list  
14 identifying any Potential CC Claimant whose second, re-mailed Notice and Claim Form was returned  
15 undeliverable. Defendants shall have no obligation to locate any Potential CC Claimant whose original  
16 Notice and Claim Form is returned undeliverable after one hundred eighty (180) days from the date of  
17 mailing, and such Potential CC Claimants, absent otherwise timely submission of the Notice and Claim  
18 Form, shall not be entitled to collect from the Fund.

19 2. Defendants shall, for any Potential CC Claimant who was employed at any time  
20 between July 8, 2007, and August 15, 2009, provide notice as follows. Within sixty (60) days of the  
21 Effective Date, Defendants shall issue a press release to news outlets nationally explaining the rights of  
22 such Potential CC Claimants under this Decree, including the Internet address to access an on-line  
23 Notice and Claim Form. The press release shall be posted on Dillard's website for the 90-day notice  
24 period. Concurrently with issuing the press release, the Defendants shall provide to the EEOC  
25 certification that the Defendants issued the press release and to whom. Such Potential CC Claimant  
26 shall have ninety (90) days from the date the Defendants submitted the press release to return a  
27 completed Notice and Claim Form.

1           E.     Claims Distribution Process

2           1.     At thirty (30) day intervals after mailing the first group of Notice and Claim  
3 Forms, Defendants shall forward to the EEOC any submitted or entered Claim Form received from any  
4 Potential CC Claimant. Defendants, in cooperation with a claims administrator, shall apply EEOC's  
5 criteria to identify who is a CC Claimant. Defendants shall ensure that the claims administrator has  
6 access to the EEOC and that the claims administrator works with the EEOC to identify qualifying CC  
7 Claimants in accordance with the EEOC's criteria. EEOC shall supply the criteria for identification of  
8 CC Claimants to Defendants within thirty (30) days of the Effective Date. There shall be no time  
9 limitation on EEOC's determination of who is a CC Claimant. The EEOC shall have sole discretion to  
10 designate the amount of the Class Fund to be distributed to each CC Claimant, and for good cause may  
11 grant an exemption of any above-cited deadline to return a questionnaire.

12           2.     Within sixty (60) days of receipt of the EEOC's notice regarding the distribution  
13 of the Class Fund, Defendants shall forward via first class mail to each CC Claimant who is a current  
14 employee at the time of distribution, a single check in the gross amount set forth in the notice of  
15 distribution amounts. The payment will be treated as wages, subject to deductions for federal and state  
16 withholding taxes and other deductions Defendants are required by law to make. Defendants shall pay  
17 the employer's portion of all deductions required by law, including but not limited to FICA and FUTA  
18 taxes, and such amounts shall not be deducted from wage payments to the claimants. Defendants, in the  
19 ordinary course, shall prepare and distribute W-2 forms to these claimants. Within three (3) business  
20 days of mailing the aforementioned payments, Defendants shall submit a copy of each check and any  
21 related correspondence to Anna Y. Park, Regional Attorney, U.S. Equal Employment Opportunity  
22 Commission, 255 East Temple Street, 4th Floor, Los Angeles, California, 90012.

23           3.     Within sixty (60) days of receipt of the EEOC's notice of distribution amounts,  
24 Defendants shall forward via first class mail to each CC Claimant who is a former employee at the time  
25 of distribution, payments for a gross amount equal to the full amount set forth in the notice of  
26 distribution amounts, as described below.

27           i.     For any CC Claimant EEOC designates as receiving an amount for  
28 damages only in the form of emotional pain and suffering, as opposed to damages for emotional pain

1 and suffering in addition to damages for lost wages, Defendants shall mail a non-wage compensation  
2 check which will be one-hundred percent (100%) of the distribution amount. Defendants, in the  
3 ordinary course, shall prepare and distribute a 1099 tax reporting form to each such CC Claimant, if  
4 required by law, and shall make any appropriate reports to the Internal Revenue Service and other tax  
5 authorities. Within three (3) business days of mailing the aforementioned payments, Defendants shall  
6 submit a copy of the checks and any related correspondence to Anna Y. Park, Regional Attorney,  
7 U.S. Equal Employment Opportunity Commission, 255 East Temple Street, 4th Floor, Los Angeles,  
8 California 90012.

9                   ii. For any CC Claimant EEOC designates as receiving an amount for  
10 damages both in the form of emotional pain and suffering and in the form of lost wages, Defendants  
11 shall mail two checks for a gross amount equal to the full amount set forth in the notice of distribution  
12 amounts. The two checks will include one check for non-wage compensation for damages in the form  
13 of emotional pain and suffering, and one check for wage compensation for damages in the form of lost  
14 wages. The non-wage check will be ninety percent (90%) of the distribution amount, and for this  
15 payment Defendants, in the ordinary course, shall prepare and distribute a 1099 tax reporting form to  
16 each claimant, if required by law, and shall make any appropriate reports to the Internal Revenue  
17 Service and other tax authorities. The wage check will be ten percent (10%) of the distribution amount,  
18 which payment will be treated as wages, subject to deductions for federal and state withholding taxes  
19 and other deductions Defendants are required by law to make. For each wage check, Defendants shall  
20 (a) pay the employer's portion of all deductions required by law, including but not limited to FICA and  
21 FUTA taxes, and such amounts shall not be deducted from wage payments to the claimants and  
22 (b) prepare and distribute a W-2 form to each claimant in the ordinary course.

23                   4. Any amounts in the Class Fund, including any accrued interest, not distributed  
24 within one (1) year of the Effective Date of this Decree shall, within thirty (30) days of the one-year  
25 anniversary of the Effective Date, be donated to a charity that promotes equal opportunities for people  
26 with disabilities or that otherwise is approved by EEOC.

VIII.

**GENERAL INJUNCTIVE RELIEF**

A. Disability Discrimination

Defendants, their officers, agents, management (including all supervisory employees), successors, assigns, and all those in participation with them, or any of them, are hereby enjoined not to discriminate against any individual in the terms and conditions of employment on the basis of disability.

B. Unlawful Medical Inquiries

Defendants, their officers, agents, management (including all supervisory employees), successors, assigns, and all those in participation with them, or any of them, are hereby enjoined from implementing any policy, procedure, or practice whereby they unlawfully request any employee to reveal confidential medical information, or discipline, suspend, or terminate any employee for refusing to reveal confidential medical information. Defendants are specifically enjoined from implementing the disclosure policy found by this Court to be facially discriminatory.

C. Unlawful Maximum Leave Policies

Defendants, their officers, agents, management (including all supervisory employees), successors, assigns, and all those in participation with them, or any of them, are hereby enjoined from implementing any policy, procedure, or practice whereby they limit the amount of leave any employee or group of employees may take, and are instead enjoined to engage in the interactive process with any employee with a disability who requests leave as a reasonable accommodation.

D. Retaliation

Defendants, their officers, agents, management (including all supervisory employees), successors, assigns and all those in participation with them, or any of them, are hereby enjoined not to engage in, implement or permit any action, policy, procedure, or practice with the purpose of retaliating against any current or former employee or applicant of Defendants or their successors, or either of them, because he or she has in the past, or during the term of this Decree, (a) opposed any practice made unlawful under the ADA/ADAAA; (b) filed a charge of discrimination alleging such practice; (c) testified or participated in any manner in any investigation (including, without limitation, any internal investigation undertaken by Defendants or their successors) or proceeding in connection with

1 the Lawsuit, Mitchell Charge, or Commissioner's Charge, or relating to any claim of an ADA/ADAAA  
 2 violation; (d) was identified as a possible witness or claimant in the Lawsuit, Mitchell Charge, or  
 3 Commissioner's Charge; (e) asserted any rights under this Decree; or (f) sought and/or received any  
 4 relief in accordance with this Decree.

## 5 IX.

### 6 **SPECIFIC INJUNCTIVE RELIEF**

#### 7 A. Equal Employment Opportunity Consultant

8 1. Defendants shall retain an Equal Employment Opportunity Consultant  
 9 ("Consultant") to implement and monitor Defendants' compliance with the ADA/ADAAA and the terms  
 10 of this Decree. The Consultant shall have demonstrated experience in the area of employment  
 11 discrimination and the ADA/ADAAA. Defendants shall ensure that the Consultant has access to  
 12 documents and individuals necessary in meeting his/her obligations under the Decree.

13 2. The Consultant shall be subject to the EEOC's approval, which shall not be  
 14 unreasonably withheld. Within ten (10) days of the Effective Date or any intended change in the  
 15 Consultant, Defendants shall notify the EEOC of the identity of its preferred Consultant. If the EEOC  
 16 approves of Defendants' preferred choice, Defendants shall retain the Consultant within thirty (30) days  
 17 of the Effective Date. If the EEOC disapproves of Defendants' preferred choice, the EEOC shall notify  
 18 Defendants of such disapproval and provide a list of three acceptable potential Consultants. Defendants  
 19 shall retain one of the acceptable potential Consultants within ten (10) days of the EEOC's notice.

20 3. The Consultant's responsibilities shall include the following:

21 a. Implementing the review and revision of policies concerning disability  
 22 discrimination, retaliation, employer requests for confidential medical information, and employee  
 23 requests for leave, so that the policies conform with employment discrimination laws and the provisions  
 24 of this Decree;

25 b. Ensuring distribution of the revised policies to all employees, including  
 26 management and supervisory employees, as required under this Decree;

27 c. Ensuring the posting and/or distribution of the Policy, Non-Discrimination  
 28 Statement, and Notice of Consent Decree and Settlement, as required under this Decree;

1 d. Implementing effective training for Defendants' employees as required  
2 under this Decree, including training to ensure that all employees understand Defendants' policies  
3 regarding the disclosure of confidential medical information; understand that a supervisor cannot  
4 discipline, suspend, or terminate an employee for failing to reveal confidential medical information or  
5 for complaining about disability discrimination; and understand how to file a complaint of disability  
6 discrimination or ADA retaliation;

7 e. Implementing effective training for Defendants' supervisory employees  
8 and human resources staff as required under this Decree, including training to ensure Defendants'  
9 supervisors and human resources staff understand Defendants' policies regarding the disclosure of  
10 confidential medical information; understand that a supervisor cannot discipline an employee for failing  
11 to reveal confidential medical information or for filing a complaint relating to requested disclosure of  
12 such information; understand the responsibility for engaging in an interactive process; understand the  
13 procedures for responding to a complaint of disability discrimination or ADA retaliation; and understand  
14 the distinction between requirements of the ADA/ADAAA and the Family and Medical Leave Act;

15 f. Holding supervisory employees accountable for compliance with the  
16 revised policies, including evaluating supervisors knowledge of the policies and responses to complaints  
17 of discrimination, and monitoring supervisors' employment decisions with regard to requests for  
18 accommodation and leave;

19 g. Facilitating Defendants' record-keeping and reporting as required under  
20 this Decree; and

21 h. Further ensuring compliance with the terms of this Decree.

22 Defendants shall bear all costs associated with the selection and retention of the Consultant and  
23 the performance of his/her duties.

24 B. Policies and Procedures

25 1. In consultation with the Consultant, Defendants shall create policies and  
26 procedures against employment discrimination and retaliation prohibited by the ADA/ADAAA (the  
27 "Policy"). The Policy shall include:  
28



1                   a.     A clear explanation of prohibited conduct, including disability  
2 discrimination, retaliation, unlawful medical inquiries, and failure to engage in the interactive process;

3                   b.     A clear revocation of any policy or practice that violates the ADA/ADAAA  
4 in order to protect the rights of individuals from disclosing health information in order to excuse a health-  
5 related absence, and the rights of individuals to depend on the validity of medical documentation or  
6 notice provided by employee family members or other associates for purposes of ADA/ADAAA;

7                   c.     A clear explanation of employee rights and company policies with regard  
8 to employer requests for confidential medical information, including consolidation of all practices and  
9 procedures into one official policy to comply with the ADA/ADAAA in implementing leave requests and  
10 distinguishing clearly rights and obligations under the ADA/ADAAA from that under the Family and  
11 Medical Leave Act;

12                  d.     A clear explanation of employee rights and company policies with regard  
13 to employee leave, including rescission of any minimum-term-of-employment restrictions on leave  
14 provided as a reasonable accommodation under the ADA/ADAAA, rescission of any policy that requires  
15 termination or other adverse action after a certain amount of leave taken, and rescission of any policy  
16 requiring advance notice of leave in contravention of Defendants' responsibility to engage in the  
17 interactive process;

18                  e.     A clear explanation of employee rights and company policies with regard  
19 to timely administration of the interactive process in response to requests for reasonable  
20 accommodation, including leave;

21                  f.     A clear explanation of procedures for providing effective reasonable  
22 accommodations with regard to all benefits and privileges of employment, including essential functions  
23 of the job such as leave and non-essential functions of the job such as trainings, meetings, interactive  
24 processes, investigations, and company events and facilities;

25                  g.     A clear explanation of how employees qualify for a reasonable  
26 accommodation, including a fast-track process for certain physical or mental impairments that should  
27 easily be concluded to be disabilities as listed at 29 C.F.R. § 1630.2(j)(3)(iii);

1                   h.       A clear explanation of the duties of supervisory and human resources  
2 employees in administering a timely interactive process and effective reasonable accommodation,  
3 including provision of a manager manual with clear, step-by-step instructions and checklists outlining the  
4 interactive process and contact information for the office he/she can contact with questions, and an  
5 employee handout with a clear, step-by-step guide to the interactive process so the employee understands  
6 what is expected of him/her and what is required of Defendants during the process;

7                   i.       A clear explanation of the duties of supervisory and human resources  
8 employees in conducting a follow-up meeting with the applicant or employee to evaluate the continued  
9 effectiveness of any accommodation provided and to discuss whether further engagement in the  
10 interactive process if necessary;

11                  j.       A clear explanation of the procedures for filing a complaint of disability  
12 discrimination, including processes by which Defendants' ensure a prompt, thorough, and impartial  
13 investigation into and resolution of any complaint of disability discrimination or retaliation;

14                  k.       Notice that anyone who makes a complaint of disability discrimination or  
15 provides information related to such complaints are protected against retaliation; and

16                  l.       Notice that Defendants will take prompt and appropriate corrective action  
17 when it determines that disability discrimination and/or ADA retaliation occurred.

18                  2.       Within ninety (90) days of the Effective Date of this Decree, Defendants shall  
19 provide to the EEOC a copy of the Policy. Within one hundred twenty (120) days of the Effective Date,  
20 Defendants shall ensure that it has distributed the Policy to all employees, including management  
21 employees. Within one hundred twenty (120) days of the Effective Date, Defendants shall submit to the  
22 EEOC a statement confirming the distribution of the Policy.

23                  3.       Within thirty (30) days of the hire date of any person hired after the initial  
24 distribution but within the term of the Decree, Defendants shall ensure that it has distributed the Policy  
25 to that person. On an annual basis through the term of the Decree, Defendants shall submit to the EEOC  
26 a statement confirming the distribution of the Policy to any person hired after the initial distribution but  
27 within the term of the Decree.

1 C. Non-Discrimination Statement

2 Within sixty (60) days of the Effective Date, Defendants shall ensure that it has included in all  
3 employee leave request forms and policy manuals a non-discrimination statement inclusive of disability  
4 discrimination, medical inquiries, the interactive process, and requests for reasonable accommodation.  
5 Within ninety (90) days of the Effective Date, Defendants shall submit to the EEOC a statement  
6 confirming the inclusion of the non-discrimination statement.

7 D. Posting of Notice of Consent Decree and Settlement

8 Within sixty (60) days of the Effective Date, Defendants shall ensure that it has posted the  
9 Notice of Consent Decree and Settlement (attached to this Decree as Attachment A) in a conspicuous  
10 place accessible to all employees. Within sixty (60) days of the Effective Date, Defendants shall submit  
11 to the EEOC a statement confirming the posting of the Notice of Consent Decree and Settlement.

12 E. Training

13 1. In consultation with the Consultant, Defendants shall review and revise their  
14 policies and procedures regarding employee trainings in the ADA/ADAAA and the Policy. However,  
15 the training can be conducted by a trainer of Defendant's choosing. The trainer shall submit training  
16 materials to the Consultant for review prior to the implementation of training under the terms of this  
17 Decree. The Consultant shall have final approval on the training. Any conflict shall be submitted to the  
18 EEOC for resolution.

19 2. Within one hundred twenty (120) days of the Effective Date and annually  
20 thereafter through the term of the Decree, Defendants shall provide live or recorded training of at least  
21 thirty (30) minutes duration to each non-supervisory employee. The training shall cover the following:

22 a. Employee rights under the Policy, including how to notify Defendants of  
23 an accommodation request or potential need for an accommodation, the distinctions between FMLA and  
24 accommodation issues under the ADA/ADAAA, and how to request medical leave under the  
25 ADA/ADAAA and/or the Family and Medical Leave Act;

26 b. Employee rights under federal laws regarding employment discrimination  
27 on the basis of disability and ADA retaliation;  
28

1 c. Employee rights to file a complaint of discrimination or retaliation,  
2 including the procedure for filing such complaints with the EEOC.

3 Within sixty (60) days of the hire date of any employee hired after any such training  
4 described above but within the term of the Decree, Defendants shall provide the required training in  
5 either live or recorded format.

6 3. Within one hundred twenty (120) days of the Effective Date and annually  
7 thereafter through the term of the Decree, Defendants shall provide live or recorded training of at least  
8 one-hour duration to each manager or supervisor. The training shall cover the following:

9 a. Each attendee's obligations under the Policy, including how to recognize  
10 an accommodation request or a potential need for an accommodation, how to respond to a request for  
11 accommodation or leave, how to engage in the interactive process, and how to respond to a complaint of  
12 disability discrimination;

13 b. Each attendee's obligations in complying with federal laws regarding  
14 employment discrimination on the basis of disability and retaliation, including the distinction between  
15 the requirements of the ADA/ADAAA and the Family and Medical Leave Act; and

16 c. The purposes and goals of the ADA/ADAAA, including the prohibition of  
17 unlawful medical inquiries into personal health information and the role of the interactive process in  
18 exploring potential reasonable accommodations.

19 Within sixty (60) days of the hire date of any manager or supervisor hired after any such  
20 training described above but within the term of the Decree, Defendants shall provide the required  
21 training in either live or recorded format.

22 4. Within one hundred twenty (120) days of the Effective Date and annually  
23 thereafter through the term of the Decree, Defendants shall provide live or recorded training of at least  
24 one-hour duration to each human resources/compliance staff member. The training shall cover the  
25 following:

26 a. Each attendee's obligations under the Policy, including how to respond to  
27 a complaint of discrimination, how to engage in the interactive process, and how to investigate a  
28 complaint of discrimination;

1                   b.       Each attendee's obligations in complying with federal laws regarding  
2 employment discrimination on the basis of disability and retaliation, including the distinction between  
3 the requirements of the ADA/ADAAA and the Family and Medical Leave Act;

4                   c.       Each attendee's particular role in implementing an accommodation and  
5 monitoring its effectiveness.

6                   Within sixty (60) days of the hire date of any human resources/compliance staff member  
7 hired after any such training described above but within the term of the Decree, Defendants shall  
8 provide the required training in either live or recorded format.

9                   5.       Any persons required to attend any training under this Decree shall verify their  
10 attendance in writing. Annually through the term of the Decree, Defendants shall produce to the EEOC  
11 documents verifying the occurrence of all training sessions required under this Decree, including the  
12 written training materials used, a description of the training provided, and a list of the names and job  
13 titles of attendees at each training session.

14           F.       Supervisor Accountability

15           In consultation with the Consultant, Defendants shall create procedures and practices by which  
16 Defendants hold supervisory and human resources employees accountable for compliance with the  
17 Policy, including evaluating their knowledge of their responsibilities under the Policy and this Decree,  
18 evaluating their responses to complaints of discrimination, and monitoring their decisions with regard to  
19 requests for accommodation and leave. The procedures and practices shall institutionalize appropriate  
20 and consistent performance reviews, counseling, training, and/or disciplinary actions intended to evaluate  
21 compliance and hold supervisory and human resources employees accountable for failing to comply with  
22 the ADA/ADAAA, the Policy, and this Decree.

23           G.       Record Keeping

24           1.       In consultation with the Consultant, Defendants shall establish a record-keeping  
25 procedure that provides for the centralized tracking of discrimination complaints involving the ADA as  
26 well as the monitoring of such complaints, including the identities of the parties involved. The records  
27 to be maintained shall include all documents generated through the duration of the Decree in connection  
28 with any complaint, any investigation into any complaint, and any resolution of any complaint.

1           2.     In consultation with the Consultant, Defendants shall establish a record-keeping  
2 procedure that provides for the centralized tracking of employee requests for medical leave. The records  
3 to be maintained shall include all documents generated through the duration of the Decree in connection  
4 with any leave request, any resolution of any leave request, and any consequence of any actual leave  
5 taken, if any.

6           3.     In consultation with the Consultant, Defendants shall establish a record-keeping  
7 procedure that provides for all information obtained regarding the medical condition, medical history, or  
8 medical leave of the applicant is collected and maintained on separate forms and in separate medical files  
9 and is treated as a confidential medical record, as required under the ADA/ADAAA.

10          4.     Defendants shall maintain all records required by this Decree and retain them  
11 throughout the term of the Decree.

12         H.     Reporting

13         Defendants shall provide the following reports annually throughout the term of the Decree:

14           1.     A statement verifying that all training sessions required under this Decree during  
15 the previous twelve (12) months occurred;

16           2.     A statement verifying that all employees required to attend a training session  
17 under this Decree during the previous twelve (12) months received the required training;

18           3.     A statement verifying that all employees required to receive the Policy during the  
19 previous twelve (12) months received the Policy;

20           4.     A description of all disability discrimination and/or ADA/ADAAA retaliation  
21 complaints made since the submission of the immediately preceding report hereunder. This description  
22 shall include the names of the individuals alleging disability discrimination or ADA retaliation; the  
23 nature of the disability discrimination or ADA retaliation; the names of the alleged perpetrators of  
24 disability discrimination or ADA retaliation; the dates of the alleged disability discrimination or ADA  
25 retaliation; a brief summary of how each complaint was resolved, including the efforts taken by  
26 Defendants to ensure compliance and accountability for supervisory and human resources employees;  
27 and the identity of the employee(s) who investigated and/or resolved each complaint. If no results have  
28 been reached as of the time of the report, the result shall be included in the next report;

1           5.       A statement verifying that the Policy, Non-Discrimination Statement, and Notice  
2 of Consent Decree and Settlement continued to be posted and/or implemented as required under this  
3 Decree; and

4           6.       A statement from the Consultant describing Defendants efforts to comply with  
5 this Decree during the previous twelve (12) months. Specifically this statement shall encompass the  
6 following:

7                   a.       An independent assessment of the effectiveness of Defendants' revised  
8 policies and procedures in protecting employees from unlawful medical inquiries, failures to provide  
9 reasonable accommodations, failures to engage in the interactive process, retaliation, and other  
10 discrimination under the ADA/ADAAA;

11                   b.       An independent assessment of the effectiveness of Defendants' trainings  
12 in protecting employees from unlawful medical inquiries, failures to provide reasonable  
13 accommodations, failures to engage in the interactive process, retaliation, and other discrimination under  
14 the ADA/ADAAA;

15                   c.       An independent assessment of the effectiveness of Defendants' trainings  
16 and supervisory accountability in educating supervisors of their responsibilities under the  
17 ADA/ADAAA and the terms of this Decree, including their roles in providing reasonable  
18 accommodations and engaging in the interactive process; and

19                   d.       An independent assessment of any areas of compliance with the  
20 ADA/ADAAA and the terms of this Decree needing improvement, as well as methods for obtaining that  
21 improvement.

22       I.       Employment Information and Records

23       If contacted for a job reference for Corina Scott, Irma Moreno, or Brittany Rios Kim, Defendants  
24 shall provide no information other than dates of employment, salary, and positions held. For any  
25 identified Claimant, Defendants shall purge his/her personnel file of any record of discipline under the  
26 policy or practice requiring the disclosure of confidential medical information or maximum leave,  
27 maintain these records in a separate personnel file, and treat these records as confidential.  
28

**X.**

**MISCELLANEOUS PROVISIONS**

A. During the term of this Decree, Defendants shall provide any potential successor-in-interest with a copy of this Decree within a reasonable time of not less than thirty (30) days prior to the execution of any agreement for acquisition or assumption of control of any of all of Defendants' facilities, or any other material change in corporate structure. Defendants shall simultaneously inform the EEOC of any such agreement for acquisition, assumption of control, or other material change in corporate structure.

B. During the term of this Decree, Defendants shall assure that each of its officers, managers, and supervisors is aware of any term(s) of this Decree which may be related to his or her job duties.

C. Unless otherwise stated, all notices, reports and correspondence required under this Decree shall be delivered to the attention of Anna Y. Park, Regional Attorney, U.S. Equal Employment Opportunity Commission, 255 East Temple Street, 4th Floor, Los Angeles, California, 90012; facsimile number (213) 894-1301.



**XI.**

**COSTS AND ATTORNEYS' FEES**

Each party shall bear its own costs of suit and attorneys' fees. Defendants shall bear all costs associated with implementing this Decree including the hiring of the Consultant and the claims administration process.

All parties, through the undersigned, respectfully apply for and consent to the entry of this Consent Decree Order.

Respectfully Submitted,

U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION  
Anna Y. Park

Date: 12/17/12

By: /s/ Anna Y. Park  
Anna Y. Park  
Attorneys for Plaintiff EEOC

BRYAN CAVE LLP

Date: 12 /17/12

By: /s/ Karen K. Cain

Attorneys for Defendants  
DILLARD'S, INC. and DILLARD STORE  
SERVICES, INC.

**[PROPOSED] ORDER**

**GOOD CAUSE APPEARING:**

The Court hereby finds that compliance with all provisions of the foregoing Decree is fair and adequate. The Court hereby retains jurisdiction for the term of the foregoing Consent Decree, and the provisions thereof are hereby approved.

**IT IS SO ORDERED.**

DATED: December 18, 2012

  
\_\_\_\_\_  
THE HONORABLE CATHY A. BENCIVENGO  
U.S. DISTRICT JUDGE  
UNITED STATES DISTRICT COURT